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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/608,810

06/26/2003

Eran Steinberg

FN-102A-US

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72104

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09/17/2008

FotoNation
Patent Legal Dept.
3099 Orchard Drive
San Jose, CA 95134

EXAMINER

SETH, MANAV

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

09/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/608,810	Applicant(s) STEINBERG ET AL.	
	Examiner MANAV SETH	Art Unit 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 35, 37-39, 80-95, 114, 116-120 and 159-225 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-16, 35, 37-39, 80-95, 114, 116-120 and 159-225 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment received on May 20, 2008 has been entered in full.
2. Applicant's amendment to the claims as presented in the amendment filed have been fully considered but these claims are subject to election/restriction requirements. The amendment as filed provides the amended as well as new independent and dependent claims and these claims provide the new subject matter for examination or/and the subject matter which was not required for examination in the previous office action, therefore these claims are subject to election/restriction requirements. For restriction purposes, claims 217—223 are read as claims 219-225, since the claims numbering requires correction.

Election/Restrictions

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, 35, 37-39, 80-84, 114, 116-118 and 171-225 describe the invention which is directed to method of processing a digital image using face detection, which processing is adjusting values of the one or more parameters within the digital image, classified in class 382, subclass 254.
 - II. Claims 6-16, 85-95, 161, 164-165, 166 and 169-170 describe the invention which is directed to method of processing a digital image using face detection, which processing is adjusting values of the one or more parameters within the digital image based on the analysis of the same digital image, where the parameter adjustment being the adjustment of an orientation of said face, classified in class 382, subclass 296.

III. Claims 119-120, 159-160, 162-163 and 167-168 describe the invention which is directed to method of processing a digital image using face detection, which processing is adjusting values of the one or more parameters within the digital image based on the analysis of the same digital image, where the parameter adjustment providing a fill flash to digitally add exposure to brighten the group of pixels that correspond to said image of said face while not digitally adding exposure to nor otherwise brightening one or more other pixels within the digital image classified in class 348, subclass 221.1.

Inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are related as combination, subcombination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the invention I (the combination) is directed to method of processing a digital image using face detection, which processing is adjusting values of the one or more parameters within the digital image and invention I do not contain limitations that are (a) adjusting orientation of the face, and (b) adjusting the exposure using fill flash as recited in the subcombinations. The subcombinations has separate utilities such as invention II is directed to a method of adjustment of an orientation of said face in the image and invention III is directed to a method of providing a fill flash to digitally add exposure to brighten the group of pixels that correspond to said image of said face while not digitally adding exposure to nor otherwise brightening one or more other pixels within the digital image.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as a method of providing a fill flash to digitally add exposure to brighten the group of pixels that correspond to said image of said face while not digitally adding exposure to nor otherwise brightening one or more other pixels within the digital image. See MPEP § 806.05(d).

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a).

Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Therefore, inventions I, II and III represent inventions that are distinct for the reasons given above and have acquired a separate status in the art as shown by their different subject matter and different classification, restriction for examination purposes as indicated is proper.

If invention II is elected, the claims 6-16, 85-95, 161, 164-165, 166 and 169-170 will be examined.

If invention III is elected, the claims 119-120, 159-160, 162-163 and 167-168 will be examined.

If invention I is elected, a further election of species is required. **The species are:**

4. The claims 1-5, 35, 37-39, 80-84, 114, 116-118 and 171-225 are directed to distinct species for the following reasons:

Species I. Claims 1-5, 35, 37-39, 80-84, 114 and 116-118 describe the invention which is directed to method of processing a digital image using face detection, which processing is adjusting values of the one or more parameters within the digital image based on the analysis of the same digital image (specification, page 15, 2nd paragraph)

Species II. Claims 171-209 describe the invention which is directed to method of processing a digital image using face detection, which processing requires generating low-resolution images, tracking the face in these low-resolution images and adjusting the digital image parameters based upon the analysis of low-resolution images (specification, page 29 – 1st paragraph).

Species III. Claims 210-225 describe the invention which is directed to method of processing a digital image using face detection, which processing requires acquiring temporally-

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sequential images, tracking the face in these low-resolution images and adjusting the digital image parameters based upon the analysis of temporally-sequential images (specification, page 37 – last paragraph).

The species are independent or distinct because, for example, species II requires the steps “generating low-resolution images, tracking the face in these low-resolution images and adjusting the digital image parameters based upon the analysis of low-resolution images”, whereas other species do not require these steps; and species III requires the steps “acquiring temporally-sequential images, tracking the face in these low-resolution images and adjusting the digital image parameters based upon the analysis of temporally-sequential images” whereas other species do not require these steps. Because these inventions/species are distinct for the reasons given above and have acquired a separate status in the art as shown by their different subject matter, restriction for examination purposes as indicated is proper.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added, even though the requirement may be traversed (37 CFR 1.143). An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable

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generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manav Seth whose telephone number is (571) 272-7456. The examiner can normally be reached on Monday to Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu, can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Manav Seth/
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September 12, 2008